

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0327
WITHHOLDING TAX
For Years 1995 AND 1996**

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ISSUES

I. Adjusted Gross Income Tax—Adequate Documentation

Authority: 45 IAC 15-5-4; IC § 6-8.1-5-1; IC § 6-8.1-5-4

Taxpayer protests the proposed assessments of Indiana's adjusted gross income tax.

STATEMENT OF FACTS

In the course of taxpayer's auction business operations taxpayer retained the services of a bookkeeper. A departmental audit assessed the taxpayer on adjusted gross income tax withholding (hereinafter 'withholding') that should have been withheld from the bookkeeper's wages. The taxpayer protested the audit determination stating the bookkeeper was an independent contractor; however, the taxpayer was unable to produce any documents to support this position. Taxpayer and his representative then filed a protest, claiming the documents would be made available.

I. Adjusted Gross Income Tax—Adequate Documentation

DISCUSSION

Taxpayer protests the proposed assessments of Indiana withholding, arguing that he now has available for inspection documents supporting his contention that the bookkeeper was an independent contractor. Because of taxpayer's reluctance to timely provide the proper documents to the auditor a hearing was set before one of the Legal Division's Hearing Officers. At the hearing, taxpayer's representative stated that records would be made available within a specified time period. Said records were not provided within the time period, nor has taxpayer provided any indication that said records will be produced.

This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the

person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer does not cite any statute, regulation, or case law for the proposition that the auditor was required to accept taxpayer's assertions as to the nature of the transactions without any supporting documentation. Pursuant to the above statute and the requirements of IC § 6-8.1-5-1 and 45 IAC 15-5-4, taxpayer has failed to establish a basis for reversal of this assessment.

FINDING

Taxpayer's protest is denied.

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